

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Writ Petition No. 247 of 2002 (M/S)

Date of decision: 23rd August, 2006

A.F.R. (Approved for Reporting)

Not Approved for Reporting

Date

Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 247 of 2002 (M/S)

Mukesh Kumar Gupta,
S/o Mithilesh Kumar Gupta,
R/o Mohalla Garg (Near Post Office),
Kashipur, District Udham Singh Nagar. ... Petitioner

Vs

1. IInd Additional District Judge,
Udham Singh Nagar.
2. Yadvendra Arya S/o Late Rajendra Pal Arya,
R/o Mohalla Amlikha Kashipur,
District Udham Singh Nagar.
3. Raghvendra Arya S/o Late Rajendra Pal Arya,
R/o Mohalla Amlikha Kashipur,
District Udham Singh Nagar. Respondents

Sri V.K. Bist, Senior Advocate assisted by Ms. Seema Sirohi and Mr. M.C. Bansal, Advocate for the petitioner.
Sri Jagdish Prasad, Advocate for respondents Nos. 2 & 3.

Date: 23rd August, 2006

Hon'ble Rajesh Tandon, J.

Heard Sri V.K. Bist, Senior Advocate assisted by Ms. Seema Sirohi, Advocate for the petitioner and Sri Jagdish Prasad, Advocate for respondents Nos. 2 & 3.

2. By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the impugned order dated 10.12.2001 passed by respondent No. 1 (Appellate Authority) in R.C.A. No. 12 of 2000 (Annexure No. 8 to the writ petition).

Factual Matrix of the Case

3. Briefly stated, an application under Section 21(1)(a) of U.P. Act No. 13 of 1972 was filed by the petitioner against

respondents Nos. 2 & 3 praying for the release of the Shop situated at Mohalla Bazar Ganj (Park Road,) Kashipur, District Udham Singh Nagar, which is under the tenancy of respondents Nos. 2 & 3, on the ground that the petitioner has passed high school and is unemployed and he has no independent business to earn his livelihood and, therefore, he wants to do the business of Electrical Goods, T.V., V.C.R., Music System, Cooking Range etc. in the said Shop.

4. It was, further, stated by the petitioner in his release application that his father Sri Mithilesh Kumar Gupta is doing the independent business in the name of Mithilesh Kumar and Brothers of which his father is the sole owner and there is no possibility of employing any other person, as the shop in possession of his father is not so elaborate so as to accommodate the petitioner also. It is also stated that the petitioner also do not want to join the business along with his father, as he wants to do the independent business. It has further been stated in the release application that the petitioner has already been married in 1994 and he is separate from his father and as such, the shop in dispute is required for his own use and occupation for settling himself in the independent business.

5. A written statement has been filed by the respondents, in which in para 3 it has been stated that the landlord can be accommodated in the business of the father.

6. An affidavit has been filed by the petitioner Mukesh Kumar, who has deposed that he wants to run the independent business and he cannot settle himself along with his father. So far as the availability of the other shops are concerned, it has been specifically stated that all other shops

are rented accommodation and the tenants are occupying the same. Relevant paras 7, 8 & 9 of the said affidavit are quoted below:

“7. यह कि इस प्रकार मैं शपथकर्ता कतई खाली हूँ और बिना व्यापार के हूँ और मैं अपना स्वतन्त्र इलैक्ट्रॉनिक गुड्स जैसे टेलीवीजन, वीडियो, म्यूजिक सिस्टम, कुकिंग रेन्ज आदि का व्यापार करना चाहता हूँ ताकि मैं अपने निजी जीवन को स्थापित कर सकूँ और अपने सामाजिक दायित्वों को निभा सकूँ और अपनी इच्छानुसार अपने बढ़ते हुए परिवार का पालन-पोषण कर सकूँ जिसके लिए मुझे विवादित दुकान की तुरन्त, सख्त व सदभावना पूर्ण आवश्यकता है।

8. यह कि मैं शपथकर्ता हरगिज भी बड़ा पूँजीपति व्यवसायी नहीं हूँ ना मेरे पास कोई व्यापार है मेरे हिस्से में कुल ग्यारह दुकानात आयी हैं जिसमें से पाँच दुकानें फर्मी मंजिल बनी हैं जिसमें पुराने किरायेदार श्री दयालसिंह, श्री जैभगवान, श्री कानसिंह, श्री केवल कृष्ण आबाद हैं तथा एक दुकान विपक्षी पर है तथा उपरी मंजिल पर चार दुकानें हैं जो भी किराये पर उठी हुयी हैं और इन्हीं सब दुकानात से प्राप्त होने वाले किराये के अतिरिक्त शपथकर्ता व मेरे परिवार की आय का अन्य कोई साधन नहीं है और किराये से मुझे वर्ष 1991-92 में 38670.00 रुपये की आय थी प्रमाण स्वरूप फोटोकापी आयकर फ़ैसला संलग्न है तथा वर्तमान में 43276.00 त्रितालीस हजार दो सौ छियत्तर रुपयेक्रसालाना की आय है। इसके अतिरिक्त शपथकर्ता की अन्य कोई दुकान नहीं है। तथा इस आय में दुकानों पर भी खर्च करना पड़ता है।

9. यह कि उपरी मंजिल पर बनी दुकानें शपथकर्ता के व्यापार के लिए उपयुक्त नहीं है ना वहाँ शपथकर्ता का व्यापार चल सकता है उन दुकानों के आगे करीब चार फुट का छज्जा है और दुकानें दबी हुई हैं। काप्रीपुर में इस प्रकार के व्यापार की कोई दुकान या शोरूम दुमंजिले पर नहीं है ना चल सकता है बल्कि फर्मी मंजिल पर ही चल सकता है जिसके लिये शपथकर्ता को विवादित दुकान की आवश्यकता है।”

7. The father of the petitioner has also filed an affidavit stating that he is doing his business independently and that his son Mukesh Kumar has no interest in his business. Relevant para 7 of the said affidavit is quoted below:

“7. यह कि शपथकर्ता के व्यापार में प्रार्थी मुकेश कुमार की ना तो आवश्यकता है और ना उसे लगाने की गुंजाइस है और ना मुकेश कुमार की इस व्यापार में कोई रुचि है और ना वह इसमें लगना ही चाहता है। हॉ खाली होने के कारण कभी कभी दुकान पर आ जाता है और सीखने के लिए खाते आदि कर देता है उसकी दिसम्बर 1994 में शादी हो गयी है और वह फरवरी 1995 से अपनी पत्नी सहित अलग रहता है, उसने अलग राप्रनकार्ड भी बनवा लिया है और उसका व उसकी पत्नी का रहना, खाना आदि सब शपथकर्ता से अलग है।”

8. The Prescribed Authority vide order dated 24.08.2000 has allowed the petitioner's release application and released the accommodation in dispute in favour of the petitioner. The relevant portions of the findings recorded by the Prescribed Authority are quoted below:

“उपरोक्त विवेचना के आधार पर मैं इस निष्कर्ष पर पहुँचता हूँ कि आवेदक किसी व्यवसाय में लगा हुआ नहीं है आवेदक की 11 दुकानें हैं जिसमें विवादित दुकान भी शामिल है सभी किराये पर उठी हैं। किराये की आय के अलावा उसके पास अन्य कोई आय का साधन नहीं है जो आवेदक द्वारा दाखिल शपथपत्र व आयकर विवरण से स्पष्ट है वर्ष 1991-92 में आवेदक की आय 38670-/- रूपया थी जो आयकर विवरणी की छाया प्रति शपथ पत्र 24ग के संलग्न से स्पष्ट है अगले वित्त वर्ष में 43276 है इस आय में से उसे इन दुकानों का रख रखाव भी करना होता है आवेदक अपनी आय बढ़ाने के लिए स्वतन्त्र व्यवसाय करना चाहता है प्रथम तल की दुकान आवेदक के व्यवसाय हेतु उपयुक्त नहीं है विवादित दुकान भूतल की है जो आवेदक के व्यवसाय हेतु उपयुक्त है आवेदन को अपनी आय बढ़ाने के लिए स्वतन्त्र व्यवसाय करने हेतु विवादित दुकान की सदभावी सच्ची और वास्तविक आवश्यकता है।”

9. So far as the comparative hardship is concerned, the same has also been decided in favour of the landlord.

10. Aggrieved by the said order of the Prescribed Authority, the respondents went in appeal. The appellate court vide judgment dated 10.12.2001 has allowed the appeal. Relevant finding recorded by the appellate court is quoted below:

“पत्रावली में उपलब्ध शपथ पत्र व प्रतिशपथ पत्र के अवलोकन से यह स्पष्ट है कि आवेदक और उसके परिवार के व्यक्तियों के पास विवादित दुकान के अतिरिक्त अन्य कई दुकानें हैं और दुकानें दौरान मुकदमा रिक्त भी हुई थी जिसे उनके द्वारा किराये पर उठा लिया गया। विवादित दुकान के पास जय भगवान की किरायेदारी वाली दुकान 10 साल से रिक्त है, आवेदक इस दुकान में अपना व्यवसाय कर सकता है। मेरी राय में विद्वान अवर न्यायालय का यह निर्णय कि आवेदक को विवादित दुकान की सदभावनापूर्ण आवश्यकता है, पत्रावली में उपलब्ध साक्ष्य के अनुरूप नहीं है। मेरी राय में आवेदक विवादित दुकान की सदभावनापूर्ण आवश्यकता को साबित करने में असफल रहा है।

“कि आवेदक सदभावनापूर्ण आवश्यकता को साबित करने में सफल नहीं रहा है, तुलनात्मक कठिनाई पर विचार किया जाना आवश्यक नहीं था। यदि इस पर विचार किया जाय तो आवेदक और

उसका परिवार धनी परिवार है और आवेदक और उसके परिवार के पास का पीपुल में अन्य कई दुकानें हैं और व्यापार हुतु फर्म है जबकि विपक्षी के जीवन यापन हुतु विवादित दुकान के अतिरिक्त आजीविका का कोई अन्य साधन नहीं है। यदि विवादित दुकान विपक्षी से रिक्त करा ली गई तो विपक्षी व उसके परिवार को सड़क पर आना पड़ेगा। इस प्रकार तुलनात्मक कटिनाई भी विपक्षी के पक्ष में है।”

11. Aggrieved by the said order of the appellate court, the petitioner (landlord) has preferred this writ petition.

12. A counter affidavit as well as supplementary counter affidavit have been filed, wherein it has been stated that there are various shops available with the landlord. It has been averred in the counter affidavit that Mukesh Kumar conducts the entire business of his father Mithilesh Kumar, but there is no evidence to support the same and moreover, every adult member of the family is entitled for his independent business. So far as the shop of Jai Bhagwan is concerned, it has not come on record that the same is available with the landlord. Therefore, the findings of the appellate court cannot be said to be justified.

13. The learned counsel for the respondents has referred the judgments in the cases of Mazboolunnisa Vs. Mohd. Saleha Quaraishi reported in ALR 1999 (35) 331; T. Sivasubramaniam and others Vs. Kashinath Pujari and others reported in ALR 1999 (37) 752; Pratap Rai Tanwani and another Vs. Uttam Chand and another reported in (2004) 8 SCC 490; Badrinarayan Chunilal Bhutada Vs. Govindram Ramgopal Mundada reported in (2003) 2 SCC 320; Santosh Kumar Sharma Vs. Vith Additional District Judge, Saharanpur and others reported in 2006(1) ARC 397; and Kedar Nath Agrawal (dead) and another Vs. Dhanraji Devi (dead) by Lrd. and another reported in (2004) 8 SCC 76.

14. All the above-mentioned judgments do not support the case of the respondents (tenants) inasmuch as none of the shops have been shown to be available with the landlord and as such, the landlord is entitled for the release of the accommodation in his favour. Moreover, the respondents have not made any efforts to search out any alternative accommodation in terms of the observations made in the aforesaid Supreme Court judgments.

Bonafide Need

15. So far as the Bonafide Need is concerned, it has been held that landlord is not best judge of his requirement. The petitioner (Landlord) has stated in his affidavit that he wants to run the independent business and he cannot settle himself along with his father. So far as the availability of the other shops are concerned, it has been specifically stated that all other shops are rented accommodation and the tenants are occupying the same.

16. In the case of **Akhileshwar Kumar and others Vs. Mustaqim and others** reported in **AIR 2003 SC 532**, the Apex Court has held in paras 3 & 4 as under:

“3. In our opinion, the approach adopted by the High Court cannot be countenanced and has occasioned a failure of justice. Overwhelming evidence is available to show that the plaintiff No. 1 is sitting idle, without any adequate commercial activity available to him so as to gainfully employ him. The plaintiff No. 1 and his father both have deposed to this fact. Simply because the plaintiff No. 1 is provisionally assisting his father in their family business, it does not mean that he should never start his own independent business. What the High Court has over-looked is the evidence to the effect, relied on by the trial Court too, that the husband of plaintiff No. 4, i.e. son-in-law of Ram

Chandra Sao, was assisting the latter in his business and there was little left to be done by the three sons.

4. So is the case with the availability of alternative accommodation, as opined by the High Court. There is a shop in respect of which a suit for eviction was filed to satisfy the need of plaintiff No. 2. The suit was compromised and the shop was got vacated. The shop is meant for the business of plaintiff No. 2. There is yet another shop constructed by the father of the plaintiffs which is situated over a septic tank but the same is almost inaccessible inasmuch as there is a deep ditch in front of the shop and that is why it is lying vacant and unutilized. Once it has been proved by a landlord that the suit accommodation is required bona fide by him for his own purpose and such satisfaction withstands the test of objective assessment by the Court of facts then choosing of the accommodation which would be reasonable to satisfy such requirement has to be left to the subjective choice of the needy. The Court cannot thrust upon its own choice on the needy. Of course, the choice has to be exercised reasonably and not whimsically. The alternative accommodation which have prevailed with the High Court are either not available to the plaintiff No. 1 or not suitable in all respects as the suit accommodation is. The approach of the High Court that an accommodation got vacated to satisfy the need of plaintiff No. 2, who too is an educated unemployed, should be diverted or can be considered as relevant alternative accommodation to satisfy the requirement of plaintiff No. 1 another educated unemployed brother, cannot be countenanced. So also considering a shop situated over a septic tank and inaccessible on account of a ditch in front of the shop and hence lying vacant cannot be considered a suitable alternative to the suit shop which is situated in a marketing complex, is easily accessible and has been purchased by the plaintiffs to satisfy the left need of one of them.”

17. In the Case of **Ragavendra Kumar v. Firm Prem Machinery & Co. (2000) 1 Supreme Court Cases 67**, it has been held:-

“It is settled position of law that the landlord is best judge of his requirement for residential or business purpose and he has got complete freedom in the matter. [See-Prativa Devi (Smt.) v. T.V. Krishnan] In the case in hand the plaintiff landlord wanted eviction of the tenant from the suit premises for starting his business as it was suitable and it cannot be faulted.

18. Following the decision of **Bega Begum (supra)**, in the case of **Joginder Pal vs. Naval Kishore Behal, 2002 SC & FB, Rent Cases, 388**, the Apex Court has held as under:-

5. In *Malpe Vishwanath Acharya and Ors. v. State of Maharashtra and Anr.* (1998) 2 SCC 1) this Court emphasized the need of social legislations like the Rent Control Act striking a balance between rival interests so as to be just to law. “The law ought not to be unjust to one and give a disproportionate benefit or protection to another section of the society”. While the shortage of accommodation makes it necessary to protect the tenants to save them from exploitation but at the same time the need to protect tenant is coupled with an obligation to ensure that the tenants are not conferred with a benefit disproportionately larger than the one needed. Socially progressive legislation must have a holistic perception and not a shortsighted parochial approach. Power to legislate socially progressive legislation is coupled with a responsibility to avoid arbitrariness and unreasonability. A legislation impregnated with tendency to give undue preference to one section, at the cost of constraints by placing shackles on the other section, not only entails miscarriage of justice but may also be unconstitutional and invalid.

8. The need for reasonable interpretation of rent control legislations was emphasized by this Court in *Bega Begum v. Abdul Ahad Khan* 1979 A.I.R. SC page 272. Speaking in the context of reasonable requirement of landlord as a ground for eviction, the Court guarded against any artificial extension entailing stretching or straining of language so as to make it impossible or extremely difficult for the landlord to get a decree for eviction. The Court warned that such a

course would defeat the very purpose of the Act which affords the facility of eviction of the tenant to the landlord on certain specified grounds. In *Kewal Singh v. Lajwanti* this Court has observed, while the rent control legislation has given a number of facilities to the tenants, it should not be construed so as to destroy the limited relief which it seeks to give to the landlord also. For instance, one of the grounds for eviction which is contained in almost all the Rent Control Acts in the country is the question of landlord's bona fide personal necessity. The concept of bona fide necessity should be meaningfully construed so as to make the relief granted to the landlord real and practical. Recently in *Shiv Sarup Gupta v. Dr Mahesh Chand Gupta*⁸- the Court has held that the concept of bona fide need or genuine requirement needs a practical approach instructed by the realities of life. An approach either too liberal or too conservative or pedantic must be guarded against.

9. The rent control Legislations are heavily loaded in favour of the tenants treating them as weaker sections of the society requiring legislative protection against exploitation and unscrupulous devices of greedy landlords. The legislative intent has to be respected by the courts while interpreting the laws. But it is being uncharitable to legislatures if they are attributed with an intention that they lean only in favour of the tenants and while being fair to the tenants, go to the extent of being unfair to the landlords. The legislature is fair to the tenants and to the landlords – both. The courts have to adopt a reasonable and balanced approach while interpreting rent control legislations starting with an assumption that an equal treatment has been meted out to both the sections of the society. In spite of the overall balance tilting in favour of the tenants, while interpreting such of the provisions as take care of the interest of the landlord the court should not hesitate in leaning in favour of the landlords. Such provisions are engrafted in rent control legislations to take care of those situations where the landlords too are weak and feeble and feel humble.

30. In providing key to the meaning of any word or expression the context in which it is set has significance. Colour and content emanating from context may permit sense being preferred to

mere meaning depending on what is sought to be achieved and what is sought to be prevented by the legislative scheme surrounding the expression. Requirement of landlord for his own use, is an expression capable for attributing an intention to the legislature that what was intended to be fulfilled is such requirement as would persuade the landlord to have the premises vacated by the tenant, to forego the rental income, and to put the premises to such use as the landlord would deem to be his own use and in the given facts and circumstances of a case the Court too would hold it to be so in contradistinction with a mere ruse to evict the tenant. The legislature intending to protect the tenant also intends to lift the protection when it is the requirement of landlord to put the accommodation to such use as he intends, away from leasing it out.

31. If we do not meaningfully construe the concept of requirement the provision may suffer from the risk of being branded as unreasonable, arbitrary or as placing uncalled for and unreasonable restrictions on the right of the owner to hold and use his property. We cannot place a construction on the expression 'for his own use' in such a way as to deny the landlord a right to evict his tenant when he needs the accommodation for his own son to settle himself well in his life. We have to give colour and content to the expression and provide the skin of a living thought to the skeleton of the words, which the Legislature has not itself chosen to define. The Indian society, its customs and requirements and the context where the provision is set in the legislation are the guides leading to acceptance of the meaning which we have chosen to assign to the words 'for his own use' in Section 13(3)(a)(ii) of the Act.

32. (v) In the present case, the requirement of landlord of the suit premises for user as office of his chartered accountant son is the requirement of landlord 'for his own use' within the meaning of Section 13(3)(a)(ii)."

19. In the case of **Prem Prakash Gupta and others Vs. Second Additional District Judge, Allahabad and others – Allahabad Rent Cases 1993 (1) page 77**, it has been held

that no doubt true that the tenant will have to be ousted from a house, if a decree of eviction has been passed, yet such an event by itself will not be a valid ground for refusing a decree for eviction. The observation in the case of Prem Prakash Gupta (supra) is quoted as below:

“As observed by this Court in its decision in the case of Rajeshwari Prasad Vs. Fateh Bahadur Chaturvedi and others reported in 1984 (1) A.R.C. 387, the bona fide need is the foundation of application for eviction of a tenant without which it cannot be allowed. Hardship is relative word”

20. The Apex Court in **G.C. Kapoor v. Nand Kumar Bhasin, 2001 (2) Allahabad Rent Cases Page No. 603** has relied upon the judgment of Datta Laxman as well as Raghunath Pale and has come to the conclusion as under:-

“9. It is settled position of law that bona fide requirement means that requirement must be honest and not tainted with any oblique motive and is not a mere desire or wish. In Dattaraya Laxman Kamble v. Abdul Rasul Moulali Kotkunde and Another, [1999 (4) SCC 1], this Court while considering the bona fide need of the landlord was of the view that when a landlord says that he needs the building for his own occupation, he has to prove it but there is no warrant for ‘presuming that his need is not bona fide’. It was also held that while deciding this question, court would look into the broad aspects and if the Court feels any doubt about bona fide requirement, it is for the landlord to clear such doubt.

10. In Raghunath G. Panhale (D) By. LRs. V. Chaganlal Sundarji and Co. [1999(8) SCC 1] this Court inter alia held that it was not necessary for landlord to prove that he had money to invest in the new business contemplated not that he had experience of it. It was a case for eviction on the ground of bona fide requirement of the landlord for non-residential

purpose, as he wanted to start a grocery business in the suit premises to improve his livelihood.”

21. In the case of **Gaya Prasad V. Pradeep Shrivastava** reported in **AIR 2001 SC 803**, the Apex Court has observed in para 15 as under:

“15. The judicial tardiness, for which unfortunately our system has acquired notoriety, causes the lis to creep through the line for long long years from the start to the ultimate termini, is a malady afflicting the system. During this long interval many many events are bound to take place which might happen in relation to the parties as well as the subject-matter of the lis. If the cause of action is to be submerged in such subsequent events on account of the malady of the system it shatters the confidence of the litigant, despite the impairment already caused.”

22. In view of the aforesaid facts and circumstance, I decide this point in favour of the landlord. The need is bonafide.

Comparative Hardship

23. So far as the Comparative Hardship is concerned, the respondents have failed to show that they have made any efforts to search out any accommodation.

24. In the case of **Bega Begum** reported in **1979 AIR SC 272**, the Apex Court has observed that in case of eviction in every case the tenant has to suffer hardship and that cannot be a ground for refusing the release application. The observations of the Apex Court are quoted below:

“13. Moreover, Section 11(1)(h) of the Act uses the words reasonable requirement which undoubtedly postulate that there must be an element of need as opposed to a mere desire of wish. The distinction between desire and need should

doubtless be kept in mind but not so as to make even the genuine need as nothing but a desire as the High Court has done in this case. It seems to us that the connotation of the term 'need' or 'requirement' should not be artificially extended to its language so unduly stretched or strained so as to make it impossible or extremely difficult for the landlord to get a decree for eviction. Such a course would defeat the very purpose of the Act, which affords the facility of eviction of the tenant to the landlord on certain specified grounds. This appears to us to be the general scheme of all the Rent Control Acts, prevalent in other States in the country. This Court has considered the import of the word 'requirement' and pointed out that it merely connotes that there should be an element of need.

9. In this connection our attention was drawn to the evidence led by the defendants that the main source of their income is the hotel business carried on by them in the premises and if they are thrown out they are to likely to get any alternative accommodation. The High Court has accepted the case of the defendants on this point, but does not appear to have considered the natural consequences, which flow from a comparative assessment of the advantages and disadvantages of the landlord and the tenant if a decree for eviction follows. It is no doubt true that the tenant will have to be ousted from the house if a decree for eviction is passed, but such an event would happen whenever a decree for eviction is passed and was fully in contemplation of the legislature when Section 11(1)(h) of the Act was introduced in the Act. This by itself would not be valid ground for refusing the plaintiffs for eviction.

26. Thus, on careful comparison and assessment of the relative advantage and disadvantages of the landlord and the tenant it seems to us that the scale is tilted in favour of the plaintiffs. The inconvenience, loss and trouble resulting from denial of a decree for eviction in favour of the plaintiffs far outweigh the prejudice or the inconvenience which will be caused to the defendants. The High Court has unfortunately weighed the eviction from that point of view."

25. In the case of **Shushila v. IInd Additional District Judge, Banda and others** reported in **2003 (1) A.I.R. Page 256**, it has been held as under:-

“A bare perusal of rule 16 of the U.P. Urban Building (Regulation of Letting, Rent and Eviction) Rules, 1972, makes it clear that the rule only prescribes certain factors which have also to be taken into account while considering the application for eviction of a tenant on the ground of bonafide need. Sub-rule (2) of Rule 16 quoted earlier relates to the cases of eviction from an accommodation for business use. Clause (1) of sub-rule (2) provides greater the period of tenancy less the justification for allowing the application; where as according to Clause 9b) in case tenant has a suitable accommodation available to him to shift his business. Greater the justification to allow the application. Availability of another suitable accommodation to the tenant, waters down the weight attached to the longer period of tenancy as a factor to be considered as provided under clause (a) of sub-rule (2) of Rule 16. Yet another factor which may in some cases be relevant under clause (c) is where the existing business of the landlord is quite huge and extensive leaving aside the proposed business to be set up, there would be lesser justification to allow the application. The idea behind sub-clause (c) is apparent i.e. where the landlord runs a huge business eviction may not be resorted to for expansion or diversification of the business by uprooting a tenant having a small business for a very period of time. In such a situation if eviction is ordered it is definitely bound to cause greater hardship to the tenant.”

26. In the case of **Arvind Kumar Vs. IInd ADJ Etawah** reported in **Allahabad Rent Cases 1997(1) Page, 304**, Rule 16(2)(a) has been interpreted and it has been held as under:

“It admits of no doubt that according to clause (a), sub-rule (2) of Rule 16, greater the period since when the tenant has been carrying on his venture in the building, less the justification for allowing the application but at the same time, having regard to

over all facts and circumstances of the case, I am persuaded to the view that the findings recorded by the Authorities under the Act in relation to bonafide requirements of the landlord cannot be assailed and whittled down merely because the petitioner had been carrying on his business in the shop in question since the year 1977. It is explicitly postulated in clause (b), sub-rule (2) of Rule 16 that where the tenant has available with him suitable accommodation to which he can shift his business without the peril of substantial loss there shall be greater justification for allowing the application. The expression "available with him" in this sub-rule does not necessarily mean actual physical availability. A suitable alternative accommodation which may become available on an effort being made in that direction is also in the comprehension of the expression and in the facts and circumstances of the case, it has been held that the petitioner was wanting in earnest efforts in looking for suitable alternative accommodation, notwithstanding the fact that the litigation between the parties had protracted to considerable stretched."

27. In the case of **Bhagwan Das v. Smt. Jiley Kaur and others** reported in **1991 (1) A.R.C. Page 377**, the Apex Court has held as under:-

"Thirdly, it was a case where was even this additional circumstance that the appellant had brought no material on record to indicate that at any time during the pendency of this long drawn out litigation he made any attempt to seek an alternative accommodation and was unable to get. In *Mst. Bega Begum v. Abdul Ahad Khan*, (1979) 1 SCC 273; 1986 SCFBRC 346 (SC), it was held that in deciding the extent of the hardship that may be caused to one party or the other, in case a decree for eviction is passed or is refused, each party has to prove its relative advantages or disadvantages and the entire onus cannot thrown on the plaintiffs to prove that lesser disadvantages will be suffered by the defendants and that they were remediable."

28. Rule 16 of the Act No. XIII of 1972 has been interpreted in the case of **Munni Lal Gupta Vs. 7th Additional District and Sessions Judge, Aligarh reported in 1997 (1) A.R.C. 301**. After relying upon the judgment of **Rajendra Kumar Gupta Vs. Gopal Krishan and other, A.I.R. 1995 Allahabad 82**, it has been held that suitable alternative accommodation, which may become available on an effort being made in that direction is also a factor to be considered and want or earnest efforts in looking for suitable alternative accommodation, disentitles protection given to the tenant while considering the comparative hardship of the parties. The observations in the decision of Munni Lal Gupta (supra) are quoted below:-

“A suitable alternative accommodation which may become available on an effort being made in that direction is also in the comprehension of the expression and in the facts and circumstances of the case, it has been held that the petitioner was wanting in earnest efforts in looking for suitable alternative accommodation, notwithstanding the fact that the litigation between the parties had protracted to considerable stretched. In Rajendra Kumar Gupta Vs. Gopal Kishan and Others, AIR 1995 Alld. 82: 1994 ARC 11, it has been held by Sudhir Narain, J. and I concur with the view taken therein that “one of the principles for considering comparative hardship of the parties is to find out as to whether the tenant had made a sincere efforts to find out alternative accommodation and had placed materials before the authorities to come to their conclusions that he made such an effort”. The fact that earlier application for release, met the fact of rejection some 10 years ago, could not be projected backward to operate as an obstacle in the way of the release application being allowed as with the passage of time, the situation has undergone considerable change. Indubitable, landlord Sanjai Gupta did his M.A. after rejection of the earlier applications and his failure to secure employment for himself, lends congruency to his moving the present application.”

29. Further there being no material on record to indicate that the respondents have made any efforts to search out the accommodation during the pendency of the case, this factor also goes against the respondents.

30. In view of the above, the comparative hardship lies in favour of the landlord.

31. The remand of the case at this stage will not be suitable, as the release application was filed in the year 1995 and this writ petition is pending since 2002. The remand of the case is not necessary in every case particularly when the matter is pending for long and in the present case, more than 10 years have elapsed since the release application was filed.

32. In the case of **Mohd. Arif Vs. IIIrd Addl. District Judge, Pilibhit** reported in **2005(2) ARC 793**, relying upon the various judgments of the Hon'ble Supreme Court, it was held in para 7 as under:

“7. When both the Courts below have rejected the release application of the landlord and judgments are found to be erroneous in law by writ Court, matter is normally remanded. However, that formula is not to be necessarily followed in every case particularly when the matter is pending for long. Release application in the instant case was filed in the year 1984 and this writ petition is pending since 1989. The Supreme Court in, **AIR 2002 SC 200 : 2001(2) ARC 603, G.C. Kapoor v. N.K. Bhasin** allowed the release application out rightly which had been rejected by the Prescribed Authority, lower appellate Court as well as High Court. In my opinion, it is a fit case where ultimate relief shall be granted to the landlord. Supreme Court has also held in **2004 SCFBRC 66 : 2004(1) ARC 137 : 2004 ACJ 304 (SC) R.E.V. Gonder v. V.V.P. Temple and 2002(2) ARC 298 (Supreme Court) R.C. Kesharwani v. Dwarika Prasad** that

when the matter is pending for long, remand must be avoided. Supreme Court in its authority reported in **Shail v. Manoj Kumar, 2004 ACJ 1213**, placing reliance upon **Surya Dev Rai v. R.C. Rai, 2003 (6) SCC 675 : 2003(2) ARC 385**, has held that in exercise of writ jurisdiction High Court has the jurisdiction also to pass itself such a decision or direction as the inferior Court or tribunal should have made.”

33. The same view has been taken in the case of **Kelawati (Smt.) Vs. Special Judge (EC Act), Moradabad and others** reported in **2006(1) ARC 78**, where in para 5 it was held as under:

“5. When both Courts below have rejected the release application of the landlord and judgments are found to be erroneous in law by writ Court, matter is normally remanded. However, that formula is not to be necessarily followed in every case particularly when the matter is pending for long. Release application in the instant case was filed in the year 1991. The Supreme Court in **G.C. Kapoor v. N.K. Bhasin (AIR 2002 SC 200 : 2001 SCFBRC 541 : 2001(2) ARC 603)** allowed the release application out rightly which had been rejected by the Prescribed Authority / Lower Appellate Court as well as High Court. The supreme Court in **R.E.V. Gounder v. V.V.P. Temple (2004 ACJ 204 (SC))** has held that when the matter is pending for long, remand must be avoided.”

34. In view of the aforesaid, it would not be in the interest of justice to remand this case at this stage.

Conclusions:

35. In view of the aforesaid, I am of the view that Bonafide Need and Comparative Hardship, both, lies in favour of the Landlord-petitioner, who has no business to settle himself.

36. Consequently, the writ petition is allowed and the order dated 10.12.2001 passed by respondent No. 1 (Appellate Authority) in R.C.A. No. 12 of 2000 (Annexure No. 8 to the writ petition) is hereby set aside.

37. However, in the interest of justice, respondents Nos. 2 & 3 are allowed time up to 31st December, 2006 to vacate the premises provided:

- a. they give the undertaking by 15th September, 2006 to vacate the premises on or before 31st December, 2006.
- b. the respondents pay the entire rent and damages due up to date by 15th September, 2006.
- c. the respondents pay regularly the damages by first week of every month.
- d. in case of failure of the aforesaid conditions, the petitioner / Landlord shall be at liberty to execute the decree forthwith.

(Rajesh Tandon, J.)